

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Tony Fountain #152157
Plaintiff,

CASE NO. 2:06-CV-548-
MHT.

VS.

DR. PEASANT, et al
Defendants.

RULE 60 (b) MOTION

Comes now, Tony Fountain, by and through himself herein moves this Honorable Court for the issuance of an order vacating its order of August 16 2006 adopting the Magistrate Recommendation of June 28 2006 and July 21, 2006, pursuant to Rule 60 (b), Fed. R. Civ. P. And asserts the following facts in support of this motion to wit:

- 1). ON JUNE 28 2006 AND JULY 21 2006 Magistrate Judge SUSAN RUSS WALKER heard and determined plaintiff motion FOR AN EMERGENCY INJUNCTION.

2). plaintiff, contends that the Magistrate Judge over stepped her authority's in hearing and determining whether or not an injunction should have been issued. And that such hearing/determination clearly violated the expressed language in 28 U.S.C. § 633 (b) (1) (A), that reads in pertinent part

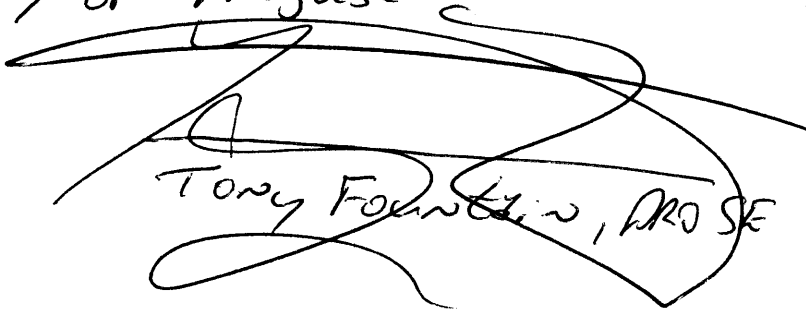
"A judge may designate a Magistrate [Magistrate judge] to hear and determine any pretrial matter pending before the Court, Except a motion for Injunction Relief"

3). plaintiff, further contends the Magistrate Judge Recommendation of June 28 2006, and July 21 2006 was a direct violation of clearly established laws pursuant to 28 U.S.C. § 636 (b) (1) A, and that the Court should release him for its order of August 16 2006 adopting the Magistrate Judge Recommendation. And allow him the opportunity to amend his motion for Injunction and Court (judge) examine his motion for

injunction renewed.

Wherefore, plaintiff, prays that (4) his Motion Rule 60 (b) Fed.R.Civ.P. be "Granted" as law and justice requires.

Done on 25th day of August 2006.


Tony Fountain, PRO SE

CERTIFICATE OF SERVICES

I hereby, Certify, that I have served a true and correct copy's of the foregoing upon the following as Addressed: OFFICE OF THE ATTORNEY GENERAL, 11th South Union Street, Montgomery, AL. 36130, by placing the same (Certified Mail) in the U.S. Mail on this 25th day of August 2006.

Sincerely

